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EXAMINER

HERNANDEZ, OLGA

ART UNIT PAPER NUMBER

2144

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/943,113

Applicant(s)

CUDD ET AL.

Examiner

Olga Hernandez

Art Unit

2144

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/30/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/30/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>22/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-12, 14-15, 18-24, 26, 28-30, 34-40, 42, 44-46, 49 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Boyle (5,864,854).

As per claims 1, 20, 38 and 50, Boyle discloses requesting client broadcasting a data request over the network to the server and/or one or more other clients or connecting to at least one client over whose address is on a proxy list held by the requesting client; and the requesting client then downloading the requested data across the network from the cache of a proxy server client that is caching the requested data (column 3, lines 23-42, 60-66, column 4, lines 7-19, figures 1, 4 and 5).

As per claims 2 and 21, Boyle discloses the user terminals running web browsers, and the respective local caches are associated with the browsers on the user terminals (column 3, lines 60-66).

As per claims 3 and 22, Boyle discloses a plurality of server clients to download the requested data (column 2, lines 50-55, figures 1 and 4).

As per claims 4, 23 and 39, Boyle discloses the address of the plurality proxy server clients (column 4, lines 15-19).

As per claims 5 and 24, Boyle discloses the address of the server (column 6, lines 10-11).

As per claims 6, 9 and 40, Boyle discloses assessing the speed of at least one connection (column 4, lines 33-50).

As per claims 8, 12, 26, 30, 42 and 46, Boyle discloses requesting client assesses the speeds of connections to more than one address in the proxy list, records and compares the measured speeds, and downloads the requested data from the address with the fastest connection (column 4, lines 33-50).

As per claims 10, 28 and 44, Boyle discloses maintaining a look-up table correlating items of data with addresses of proxy server clients that are caching that data (column 6, lines 9-16).

As per claim 14, Boyle discloses the requesting client stores the address of the proxy server client that provided the requested data, and assembles an address list of the proxy server clients most commonly accessed to obtain the requested data (column 2, lines 39-47, column 3, lines 26-31, 40-45, column 4, lines 7-17).

As per claim 15, Boyle discloses the data request cascade through levels of a three or chain structure where the address is not on the proxy list held by the requesting client (column 6, lines 6-16).

As per claims 18, 19, 34, 35, 37 and 49, Boyle discloses monitoring the workload so the workload will be efficiently distributed through the available systems (column 4, lines 33-50).

As per claims 11, 29 and 45, Boyle discloses reporting changes in the cache status to the requesting client (column 6, lines 52-58).

As per claim 36, Boyle discloses responding to the data request from the client (figures 1 and 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 13, 25, 31-33, 41, 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle (5,864,854) in view of Cotichini et al (6,300,863).

As per claims 7, 25 and 41, Boyle does not teach assessing the speed of the connection by pinging the associated address. However, Cotichini teaches it in column 12, lines 13-18. Therefore, it would have been obvious to one skill in the art to combine the aforementioned inventions in order to trace lost or stolen electronic articles through global network, initiating a traceroute to provide the host with the Internet communication links connecting the client to the host.

As per claims 13, 31, 32, 47 and 48, Boyle does not teach the address in the table being pinged and comparing the response time. However, Cotichini teaches it in column 12, lines 13-18. Therefore, it would have been obvious to one skill in the art to combine the aforementioned inventions in order to trace lost or stolen electronic articles

through global network, initiating a traceroute to provide the host with the Internet communication links connecting the client to the host.

As per claim 33, Boyle teaches a tree or chain structure comprising a plurality of levels (column 5, lines 50-61).

As per claim 45, Boyle discloses reporting changes in the cache status to the requesting client (column 6, lines 52-58).

Claims 16, 17, 27, 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle (5,864,854) in view of Johnson (2003/0061353).

As per claims 16, 27 and 43, Boyle does not teach checking the speed connection meeting a target connection speed before the request (comparing connection speed). However, Johnson teaches it in paragraph [0041]. Therefore, it would have been obvious to one skill in the art to combine the aforementioned inventions in order to optimize network performance redirecting service request to other routers that are more suitable to service the request that the router that received the request.

As per claim 17, Boyle does not teach assessing the speed of the connection by pinging the associated address. However, Johnson teaches it in paragraph [0055]. Therefore, it would have been obvious to one skill in the art to combine the aforementioned inventions in order to optimize network performance redirecting service request to other routers that are more suitable to service the request that the router that received the request.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

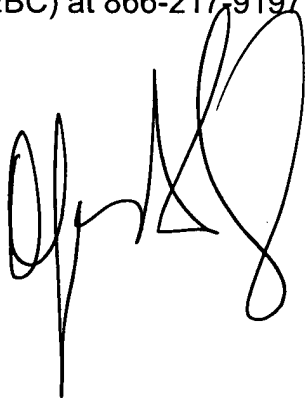
Claim 1-50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-69 of copending Application No. 09/943,118. Although the conflicting claims are not identical, they are not patentably distinct from each other because the applicant is using of similar language to claim the same subject matter where the same structure is used to download and upload data via a network, where each client has a local cache to perform the same functions such as comparing the speed and time of the different devices.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Hernandez whose telephone number is 571-272-7144. The examiner can normally be reached on Mon-Thu 7:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on 571-272-3925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to be 'Olga Hernandez', with a large loop at the end.

Olga Hernandez
Primary Examiner
Art Unit 2144